APPENDIX

ORDER OF THE SUPREME COURT OF OHIO DISMISSING THE APPEAL

(Dated September 15, 1982)

No. 82-910

THE SUPREME COURT OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS.

HELEN WEST,
Appellant,
vs.
ROADWAY EXPRESS, INC., *et al.*,
Appellees.

APPEAL FROM THE COURT OF APPEALS
FOR SUMMIT COUNTY

This cause, here on appeal as of right from the Court of Appeals for Summit County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY

(Dated September 15, 1982)

No. 82-910

THE SUPREME COURT OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS.

HELEN WEST,
Appellant,
vs.
ROADWAY EXPRESS, INC., *et al.*,
Appellees.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR SUMMIT COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

DECISION AND JOURNAL ENTRY OF THE COURT OF APPEALS

(Dated April 21, 1982)

C.A. No. 10263

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO)
) ss:
COUNTY OF SUMMIT)

HELEN WEST,
Plaintiff-Appellee Cross-Appellant,

v.

ROADWAY EXPRESS, INC.,
Defendant-Appellant Cross-Appellee,

and

OTTO E. LIIPFERT and WILLIAM F. SPITZNAGEL,
Defendants.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF SUMMIT, OHIO CASE No. CV 78 01 0094

DECISION AND JOURNAL ENTRY

This cause was heard January 11, 1982, upon the record in the trial court, including the transcript of proceedings, and the briefs. It was argued by counsel for the parties

and submitted to the court. We have reviewed each assignment of error and make the following disposition:

PER CURIAM

FACTS

Mrs. Helen West, plaintiff below and cross-appellant before this court, was an employee of Roadway Express, Inc. (hereafter Roadway) for many years. She began her employment in 1955 and, except for a brief interval, served that company continuously until 1976, when she was discharged.

In 1966, plaintiff began working as secretary to Otto E. Liipfert, who had been recently promoted to Vice-President of Field Operations. Liipfert repeatedly rated her performance as exceptional and outstanding. By 1974, plaintiff was the second highest paid secretary in the Akron executive offices.

In late 1974 or early 1975, Liipfert informed plaintiff that she was to report to William Spitznagel who was to be the new Executive Vice President of Field Operations at Roadway. Liipfert moved up to President of Roadway at the same time.

In November 1975, plaintiff was informed by Spitznagel to report directly to Mr. Charles Gielow, a subordinate of Spitznagel.

On June 24, 1976, plaintiff was discharged by Spitznagel. The reasons assigned for her dismissal were that her performance and her attitude were not in conformity with company standards.

Contending that her discharge was wrongful and motivated by her rejection of an alleged sexual proposition made to her by Liipfert during the summer of 1974, plain-

tiff sued Roadway, Spitznagel and Liipfert for damages in the Summit County Court of Common Pleas. We do not discuss here the aspects of plaintiff's complaint filed in U.S. District Court.

Plaintiff's complaint, filed January 12, 1978, claimed damages predicated upon two theories of recovery.

First, plaintiff contended that in order to induce her to resign voluntarily, she was subjected to sexual harassment of a malicious nature, which action on the part of defendants Liipfert and Spitznagel constituted not only an interference with her right to privacy; but an intentional and malicious infliction of emotional and physical distress upon her; an interference with her employment relationship with Roadway; an invasion of her civil rights and liberties; and a discriminatory practice in violation of R.C. 4112.02 and Section 2000e-2 et seq., Title 42, U.S. Code.

Secondly, she contended that the harassment resulted first in the reassignment of her employment duties, then demotion and finally, loss of her employment through termination. This claim, as opposed to the tort theories underlying her first contention, was based on the theory of contract. It was plaintiff's position that she was a party to an implied contract which assured her continuing employment with Roadway until she became 65 years of age.

The answer filed by defendants generally denied the allegations made by Mrs. West but, in addition, set forth a number of defenses which would bar plaintiff's claims for relief. These included the defense of the Statute of Frauds, The Statute of Limitations, Res judicata, waiver, and lack of jurisdiction.

The defendants' motion to dismiss the complaint was granted in part by the trial judge. The order of the court

dismissed plaintiff's discrimination practice cause of action under R.C. 4112.02 and Section 2000e-2 et seq., Title 42, U.S. Code, but overruled the motion with respect to the remaining claims.

Prior to trial, defendants also moved the court for summary judgment. The court's ruling on the motion found for defendants on plaintiff's claim for invasion of privacy and/or interference with plaintiff's private activities, and on her claim for malicious interference with her contract of employment. The court's order was subsequently followed by another, which, based upon the summary judgment ruling, dismissed plaintiff's claims against the individual defendants, as well as her claim for punitive damages. These orders are the foundations of plaintiff's cross-appeal.

The trial court's finding on the motion for summary judgment as it relates to the contractual issue is of pertinence to our consideration and thus, is inserted verbatim at this point:

> "* * *.
>
> "This Court is of the opinion that there is, after an employee has successfully completed a probationary period of employment, an implied promise that the employee will not be discharged except for cause."
>
> "* * *."

Plaintiff's remaining claim for wrongful discharge based on an implied contract was preserved for trial and resulted in a jury verdict in the amount of $287,000 rendered in favor of Mrs. West. This judgment is the subject of the Roadway appeal.

THE APPEAL OF ROADWAY EXPRESS

ASSIGNMENT OF ERROR I

"The trial court erred in submitting to the jury an issue of liability on a claim of an implied contract between the parties for assured employment until retirement and in not granting a dismissal upon motion of the appellant."

The established law in Ohio is that in the absence of an employment contract for a fixed and definite period, an employee may be terminated at the will of the employer for such cause as the employer believes valid. *Henkel v. Educational Research Council* (1976), 45 Ohio St. 2d 249. *Spain v. Luxaire, Inc.* (Lorain Co. Ct. App. No. 2800, Decided January 24, 1979) unreported.

Generally, even a contract for permanent employment or for life employment is construed to be nothing more than an indefinite hiring terminable at will, unless the express terms of the contract and/or other circumstances surrounding the agreement clearly manifest the parties' intent to bind each other for life. *Forrer v. Sears, Roebuck, and Co.* (1967), 36 Wis. 2d 388, 153 N.W. 2d 587 op. cit. *Henkel v. Educational Research Council, supra,* at 255. See also, Annot., 60 ALR 3d 226 (1974), and 35 Ohio Jurisprudence 2d 638, Master and Servant, Section 14.

Although plaintiff concedes that this is a correct and current statement of the law in Ohio, she nevertheless contends that Roadway's booklets, brochures, documents, manuals, retirement benefits, stock plans, statements of company policy, and company practice created an implied contract that employment with Roadway was permanent until retirement age 65, subject to termination only for good cause.

It is clear from the record that there was never an express contract, written or oral, between plaintiff and Roadway. We shall, therefore, examine the evidence that the trial court and the jury found to create an implied contract of employment.

When plaintiff rejoined Roadway in 1956, she, as well as other new employees, was given a booklet entitled "General Information for Office and Administrative Personnel" (plaintiff's exhibit no. 43). The booklet contained an introductory statement signed by R.W. Corns, then executive vice-president of the company, which provided, in part, that:

> "• • •
>
> "We intend to offer you full respect for your dignity as an individual, favorable conditions of employment, opportunity for advancement in accordance with your abilities and performance of duty, and a feeling of security and a sense of participation in our common business enterprise. We feel that your response should be one of good will toward our people, industry and effort toward your job, and loyalty to our Company."
>
> "• • •"

The booklet concluded with the following:

> "• • • We are very glad that you have chosen Roadway for your career. We extend to you our very best wishes and sincerely hope that your association with us will be a long and happy one."

A letter to Roadway's salaried employees from Galen J. Roush, then Chairman of the Board of Roadway, which accompanied a booklet explaining the company's new stock bonus plan, (plaintiff's exhibit no. 35) stated that:

"The Company's Stock Bonus Plan, * * * is designed to provide you with an opportunity to accumulate, during your working years, an ownership interest in Roadway stock to enhance the future financial position of yourself and your family.

"The Stock Bonus Plan is, in substance, a savings plan. It is a valuable supplement to the Company's existing Life Insurance, Medical, and Retirement Plans in that the stock accumulated will be available to you when you retire, as an element of your financial net worth; or, in the event of your death or disability, will help provide for your family."

"* * *."

The booklet itself provided that:

"* * *.

"Normally, you will receive your Roadway stock when you retire. * * *."

However, it is interesting to note that the booklet also stated that:

"The Roadway Stock Bonus Plan is for regular, full time salaried employees not covered by a labor contract. You are a regular, full time salaried employee *if your employment is for an indefinite period*, your regular work schedule is 40 hours or more per week, and your compensation is not related to the number of hours you work." (Emphasis added).

"* * *."

Roadway also established a voluntary stock purchase plan available to all Roadway employees. Additionally, Roadway provided a retirement plan, a medical care plan, a life and accident insurance plan, a long term disability plan, and a dental and vision care plan to its employees.

In addition, plaintiff produced documents and testimony which suggested that Roadway had established a practice of discharging employees only for good cause. Joseph May, who had held the position of director of employee relations at Roadway, testified that he had tried to discourage terminations without cause, and that:

> "* * * in this day and age we had to be cautious as to how we terminated employees; that we should establish the cause and document that in the personnel file before taking action."
>
> "* * *." (T.O.P. Vol. I, pg. 148).

Plaintiff also produced the Roadway Company Manual (plaintiff's exhibit no. 58) as evidence of an implied contract not to discharge except for just cause. In a section on terminations, the Manual provided that:

> "In the best of situations, there is always a certain amount of tension and strain connected with the terminating of an individual's employment. Due to these circumstances, all unnecessary discussion concerning the situation is to be avoided. While a person whose services are terminated is entitled to know the reason for such action, the comments must be factual and concise as possible. In other words, if a person's employment is terminated as the result of the individual's gross misconduct, the individual should be informed that his or her services are being terminated as a result of such action. If the termination is the result of the unsatisfactory performance of work or in the considered best interests of the company, the individual should be so informed without elaboration. Once a decision has been reached, after careful and thorough consideration, that an employee is to be released, there is nothing to be gained by

engaging in an argumentative discussion with the involved person."

The Manual also stated that:

"Employees whose services are to be terminated are to be given advance notice, except where the reason for discharge is dishonesty, gross neglect of duty, gross personal misconduct or any other reason justifying summary discharge under an applicable labor contract."

The Roadway Manual also established a 90 day probationary period of employment for all new employees during which time:

"• • •.

"If general progress and development are *not* considered satisfactory, immediate action shall be taken to terminate the employee's services. • • •."

Plaintiff submitted that the above evidence constituted an implied contract that after the successful completion of the probationary period, she was assured of permanent employment until her retirement and could only be terminated for just cause. We must respectfully disagree.

After an extensive examination of the testimony and exhibits produced by the plaintiff, we discover no basis for a finding that the various documents, booklets, benefits, and company practices are sufficient to create an implied contract for permanent employment, and/or an implied contract not to discharge except for just cause, in derogation of the established law of Ohio.

We must conclude that plaintiff's employment was for an indefinite period and as such was terminable at the will of either plaintiff or Roadway. See, *Henkel v. Council*,

supra; Fawcett v. G. C. Murphy & Co. (1976), 46 Ohio St. 2d 245; *Spain v. Luxaire, Inc., supra; Tullos v. Ponderosa Systems, Inc.* (Franklin Co. Ct. App. No. 78 AP-364, Decided December 5, 1978) unreported; *Schmidt v. Beams Broadcasting Corp., et al.* (Lucas Co. Ct. App. No. L-79-357, Decided July 3, 1980) unreported; and *Baric v. Firestone Tire & Rubber Co.* (N.D. Ohio No. C81-77A, Decided June 30, 1981) unreported.

Thus, Roadway's motion for summary judgment should have been granted, it being entitled to judgment as a matter of law. Accordingly, the verdict and judgment for plaintiff rendered below is reversed, and final judgment on the issue of implied contract entered in favor of Roadway.

ASSIGNMENTS OF ERROR

"II. Even if plaintiff's contract of employment was one for a fixed term, the statute of frauds, R.C. §1335.05, bars any claim thereon when there is no writing to embody any promise in respect of the essential terms of the agreement."

"III. Even if there were a basis to submit to the jury an issue as to the existence of an implied contract for a specific term, the trial court erred in permitting prejudicial testimony irrelevant to the issues in the case and in charging the jury on issues of fact not presented by the evidence."

Although our disposition of Roadway's initial assignment of error renders the remaining assignments of error moot, we are bound by the dictates of App. R. 12(A) to address in writing all errors assigned.

As we have stated above, plaintiff's employment was for an indefinite period, terminable at the will of either

party at any time. As such the Statute of Frauds is inapplicable.

Assuming, as apparently we must, that the claim of implied contract was properly tried and submitted to the jury we find that the testimony concerning defendant Liipfert's alleged proposition of plaintiff was relevant to the issue of the reason for plaintiff's discharge. The prejudicial effect of said testimony did not substantially outweigh its possible probative value such that it should have been excluded.

Finally, we find that the issues of whether there was an implied contract for assured employment until retirement, and whether plaintiff could only be terminated for just cause after the expiration of the probationary period of employment are in effect the same issue.

SUMMARY

Assignments of error two and three are overruled. Assignment of error number one is sustained and final judgment entered for defendant-appellant, Roadway Express, Inc.

THE CROSS-APPEAL OF PLAINTIFF HELEN WEST

ASSIGNMENTS OF ERROR

"1. The court erred in sustaining the defendants' motion to dismiss and in sustaining that part of their summary judgment motion relating to plaintiff's claim in tort for a malicious, abusive, wrongful, and wanton discharge, which had the effect of dismissing defendant Roadway Express, Inc. from any liability in tort, and in entering a judgment dismissing defendants Liipfert and Spitznagel as parties-defendant.

"2. The court erred in sustaining that part of the defendants' motion for summary judgment relating to plaintiff's claim for a wrongful interference with her private and personal life (invasion of privacy), and in entering a judgment dismissing defendant Liipfert as a party-defendant.

"3. The court erred in sustaining that part of defendants' summary judgment motion relating to plaintiff's claim for a wanton, willful, and malicious infliction of emotional and physical distress upon her (the tort of outrage), which had the effect of dismissing defendant Roadway Express, Inc. from any liability in tort, and in entering a judgment dismissing defendants Liipfert and Spitznagel as parties-defendant.

"4. The court erred in sustaining that part of defendants' motion for summary judgment relating to plaintiff's claim in tort for a wanton, willful, and malicious interference with her contract relationship with defendant Roadway Express, Inc. and in entering a judgment dismissing defendants Liipfert and Spitznagel as parties-defendant.

"5. The court erred generally in sustaining the defendants' motion to dismiss and in sustaining that part of the defendants' motion for summary judgment which related to plaintiff's claims in tort, because such ruling had the effect of denying her demand for punitive damages and excluding any evidence of the wealth of the defendants.

"6. The court erred in overruling plaintiff's April 9, 1979, motion requiring one Betty Rainieri, an employee of defendant Roadway Express, Inc., to answer questions propounded to her at an oral

deposition, for an order enjoining the defendants and their counsel, who also represented the witness, from instructing her not to answer questions, and from obstructing the plaintiff in her discovery.

"7. The court erred in overruling plaintiff's April 23, 1979, motion requiring one Douglas A. Wilson, an employee of defendant Roadway Express, Inc., to answer a question propounded to him at an oral deposition.

"8. The court erred in deferring any decision on the propriety and necessity of defendant Liipfert answering plaintiff's interrogatories nos. 1-10 and nos. 12-17, and defendant Spitznagel answering plaintiff's interrogatories nos. 1-8 and nos. 10-13, propounded to them on March 16, 1979."

I

Plaintiff's first assignment or error raises the issue of whether an employer has a completely unlimited right to terminate the employment of one whom it has hired for an indefinite term. The general rule, and that followed in Ohio, is that unless an employment contract specifically obligates both the employer and the employee for a definite term of employment, the employment is considered to be terminable at the will of either party. *Henkel v. Council, supra,* at 251. See also *Fawcett v. G. C. Murphy & Co., supra,* and *Spain v. Luxaire, Inc., supra.*

Although plaintiff does not challenge the general principle that an employee's employment may be terminated at the will of the employer without just cause, she asks us to recognize an exception to the rule. Plaintiff claims that notwithstanding the terminable-at-will doctrine, an employee has a cause of action sounding in tort when the

employee is fired for refusing to commit an illegal act or an act which violates a fundamental principle of public policy.

We recognize that in a growing number of jurisdictions, the terminable-at-will doctrine is not an absolute bar to a claim for wrongful discharge. Many of these jurisdictions have grafted a public policy exception to the terminable-at-will doctrine, such as that proposed by plaintiff.

The decisional law in this area is the opinion in *Petermann v. International Brotherhood of Teamsters* (1959), 174 Cal. App. 2d 184, 344 P. 2d 25, in which an at-will employee was discharged when he refused to commit perjury at the insistence of the employer. Although the case was decided on a cause of action sounding in contract, the court's holding that an employer's right to discharge an at-will employee may be circumscribed by considerations of public policy, provided the foundation upon which other courts have fashioned a cause of action for wrongful discharge based on tort.

Our research has revealed a growing number of jurisdictions which have recognized or have indicated a willingness to recognize the public policy exception to the terminable-at-will doctrine, and have characterized the cause of action as one in tort. See *Reuther v. Fowler & Williams, Inc.* (1978), 255 Pa. Sup. 28, 386 A. 2d 119; *Geary v. U.S. Steel* (1974), 456 Pa. 171, 319 A. 2d 174; *McNulty v. Borden, Inc.* (E.D. Pa., 1979), 474 F. Supp. 1111; *Sventko v. Kroger Co.* (1976), 69 Mich. App. 644, 245 N.W. 2d 151; *Trombelta v. Detroit, Toledo & Ironton R.R. Co.* (1978), 81 Mich. App. 489, 265 N.W. 2d 385; *O'Sullivan v. Mallon* (1978), 160 N.J. Super. 416, 390 A. 2d 149; *Pierce v. Ortho Pharmaceutical Corp.* (1980), 84 N.J. 58, 417 A. 2d 505; *Lally v. Copygraphics* (1980), 173 N.J. Super. 162, 413 A. 2d 960; *Nees*

v. Hocks (1975), 272 Or. 210, 536 P. 2d 512; *Brown v. Transcon Lines* (1978), 284 Or. 597, 588 P. 2d 1087; *Adler v. American Standard Corp.* (1981), 290 Md. 615, 432 A. 2d 464; *Ward v. Frito-Lay, Inc.* (1980), 95 Wis. 2d 372, 290 N.W. 2d 536; *Sheets v. Teddy's Frosted Foods* (1980), 179 Conn. 471, 427 A. 2d 385; *Roberts v. Atlantic Richfield Co.* (1977), 88 Wash. 2d 887, 568 P. 2d 764; *Johnson v. National Beef Packing Co.* (1976), 220 Kan. 52, 551 P. 2d 779; *Harless v. First National Bank* (W. Va., 1978), 246 S.E. 2d 270; *Jones v. Keogh* (1979), 137 Vt. 562, 409 A. 2d 581; *Brower v. Holmes Transportations, Inc.* (Vt., 1981), 435 A. 2d 952; *Tameny v. Atlantic Richfield Co.* (1980), 164 Cal. Rptr. 839, 610 P. 2d 1330; *Kelsay v. Motorola, Inc.* (1978), 74 Ill. 2d 172, 384 N.E. 2d 353; *Palmateer v. International Harvester, Inc.* (1981), 85 Ill. 2d 124, 421 N.E. 2d 876; *Perks v. Firestone Tire and Rubber Co.* (C.A. 3, 1979), 611 F. 2d 1363.

A few jurisdictions have held that a cause of action in tort for wrongful discharge is available, but only where the discharge is in direct violation of a statutory right or duty. See, e.g., *Frampton v. Central Indiana Gas Co.* (1973), 260 Ind. 249, 297 N.E. 2d 425; *Campbell v. Eli Lilly & Co.* (Ind., 1981), 421 N.E. 2d 1099; *Lampe v. Presbyterian Medical Center* (1978), 41 Colo. App. 465, 590 P. 2d 513; *Catania v. Eastern Air Lines* (Fla. App., 1981), 381 So. 2d 265.

Other courts have held that a discharge in contravention of public policy creates a cause of action for wrongful discharge, but that the cause of action sounds in contract. See *Monge v. Beebe Rubber Co.* (1974), 114 N.H. 130, 316 A. 2d 549; *Howard v. Dorr Woolen Co.* (1980), 120 N.H. 295, 414 A. 2d 1273; *Fortune v. National Cash Register Co.* (1977), 373 Mass. 96, 364 N.E. 2d 1251; *M.B.M. Co. v. Counce* (1980), 268 Ark. 373, 596 S.W. 2d 681; *Chin v.*

American Telephone & Telegraph (1978), 96 Misc. 2d 1070, 410 N.Y.S. 2d 737; and *Savodnik v. Korvettes, Inc.* (E.D. N.Y., 1980), 488 F. Supp. 822.

Still other jurisdictions have indicated a willingness to recognize a cause of action for wrongful discharge, based on the public policy exception to the at-will doctrine, but have failed to designate whether such cause of action is a contract or a tort claim. See, e.g., *Scroghan v. Kraftco Corp.* (Ky., 1977), 551 S.W. 2d 811; *Jackson v. Minidoka Irrigation Dist.* (1977), 98 Idaho 330, 563 P. 2d 54; *Abrisz v. Pulley Freight Lines* (Iowa, 1978), 270 N.W. 2d 454; *Keneally v. Orgain* (Mont., 1980), 606 P. 2d 127; *Mau v. Omaha National Bank* (1980), 207 Neb. 308, 299 N.W. 2d 147; *Daniel v. Magma Copper Co.* (1980), 127 Ariz. 320, 620 P. 2d 699.

In addition, recent scholarly commentaries have been in overwhelming support of recognition of a cause of action for wrongful discharge.[1] Nevertheless, a number of jurisdictions which have recently considered the issue have expressly rejected the public policy exception to the at-will rule, and have denied the discharged employee a cause of action. See, *Raley v. Darling Shop of Greenville, Inc.* (1950), 216 S.C. 536, 59 S.E. 2d 148; *Christy v. Petrus* (1956), 365 Mo. 1187, 295 S.W. 2d 122; *Freeman v. Elbilco,*

Footnote 1: See, e.g., Blades, Employment At Will v. Individual Freedom: On Limiting the Abusive Exercise of Employer Power, 67 Colum. L. Rev. 1404 (1967); Note, A Common Law Action for the Abusively Discharged Employee, 26 Hastings L.J. 1435 (1975); Comment, Protecting the Private Sector At Will Employee Who "Blows the Whistle"; A Cause of Action Based Upon Determinants of Public Policy, 1977 Wis. L. Rev. 777; Note, Protecting At Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith, 93 Harv. L. Rev. 1816 (1980); Peck, Unjust Discharges From Employment: A Necessary Change in the Law, 40 Ohio St. L.J. 1 (1979); Comment, Wrongful Discharge of Employees Terminable at Will—A New Theory of Liability in Arkansas, 34 Arkansas L. Rev. 729 (1981).

Inc. (La. App., 1976), 338 So. 2d 967; *West v. First National Bank* (1978), 145 Ga. App. 808, 245 S.E. 2d 46; *Griffith v. Electrolux Corp.* (E.D. Va., 1978), 454 F. Supp. 29; *Plaskitt v. Black Diamond Trailer Co.* (1968), 209 Va. 460, 164 S.E. 2d 645; *Bender Ship Repair v. Stephens* (Ala., 1980), 379 So. 2d 594; *Whittaker v. Care-More, Inc.* (Tenn. App., 1981), 621 S.W. 2d 395; *Dockery v. Lampart Table Co.* (1978), 36 N.C. App. 293, 244 S.E. 2d 272, *cert. denied* (1978), 295 N.C. 465, 246 S.E. 2d 215; *Kelly v. Mississippi Valley Gas Co.* (Miss., 1981), 397 So. 2d 874; *Ivy v. Army Times Pub. Co.* (D.C. App., 1981), 428 A. 2d 831; *Southwestern Bell Telephone Co. v. Dixon* (Tex. Civ. App., 1978), 575 S.W. 2d 596, *writ dism'd.* (Tex., 1980), 607 S.W. 2d 240; *Phillips v. Goodyear Tire and Rubber Co.* (C.A. 5, 1981), 651 F. 2d 1051.

So far as we are able to ascertain, Ohio has neither adopted nor specifically rejected an exception to the at-will rule. Thus, we are being asked to assimilate into the law of this state a cause of action in tort heretofore unrecognized here.

Each of the cases drawn to our attention has been read and considered in reference to its relationship to both existing Ohio law and to the law of the state from which the opinion has come. These opinions cover a wide variety of factual situations and present many divergent views concerning several theories of recovery. Although none of the theories advanced and given credence have exact parallels in this state, in light of the recent cases evidencing a growing trend toward judicial recognition of the public policy exception to the "terminable-at-will" doctrine, we hesitate to disagree that in the proper case, a cause of action for tortious wrongful discharge should be available to the discharged employee.

However, we do not reach the question of whether to recognize a cause of action for wrongful discharge, for even assuming, arguendo, that Ohio would follow the public policy exception, we do not find it applicable to the facts of the instant case. Several factors lead us to this conclusion.

Although it is argued that considerations of public policy demand that plaintiff be afforded some right of redress for her claimed injuries and resultant damages under one or more of the legal theories advanced, this court is of the opinion that there is no need to give birth to new remedies when there are adequate remedies in existence at the present time as provided by R.C. 4112.02 et seq. and Title VII (Section 2000 e-2 et seq., Title 42, U.S. Code).

While we do not hold that these statutory schemes provide the exclusive remedy for all actions involving job related sexual harassment, we are of the opinion that the protections and remedies afforded thereby preclude the necessity of our taking cognizance of additional causes of action heretofore unrecognized in the laws of this state. So long as the statutory protection exists, there is no reason on our part to implement what may be considered as the public policy of this state by creating new theories of tort liability.

Second, we find that plaintiff has failed to show that her termination by defendant Spitznagel in June 1976, was in any way related to the propositon allegedly made by by defendant Liipfert approximately two years earlier. Construing the pleadings of the parties, the depositions of the parties and the various witnesses, and other evidence in plaintiff's favor, and resolving all factual questions and inferences most strongly in her favor, we can

find absolutely no basis in the record upon which a reasonable jury could conclude that plaintiff's rejection of Liipfert's proposition was the motivational factor behind her discharge.

In any event, whether we need even reach this issue is extremely doubtful. In her complaint, plaintiff alleged that:

"* * *.

"8. Defendant's campaign of sexual harassment and abusive, malicious, wrongful and wanton discharge constituted the following:

"1. A wrongful interference with her private and personal life;

"2. A wanton, wilful, and malicious infliction of emotional and physical distress upon her;

"3. A discriminatory practice contrary to Section 4112.02, Ohio Rev. Code, and Title 42, U.S. Code, 2000 e-1, etc., particularly 2000 e-2(a), commonly referred to as the Equal Employment Opportunity Act of 1972;

"4. A wanton, wilful and malicious interference with her contract relationship with defendant, Roadway Express, Inc.; and

"5. An invasion of her civil rights and liberties."

"* * *."

Upon defendant's motion to dismiss the complaint for failing to state a cause of action and for lack of jurisdiction the court on March 29, 1978, ordered that:

"* * * the plaintiff's complaint regarding a violation of her rights under 42 U.S.C. Sections 2000 e-1,

et seq. and violations of her rights under Section 4112.02 et seq. of the Ohio Revised Code be, and the same hereby are, dismissed. With respect to the plaintiff's claim for invasion of privacy, malicious interference with contract and breach of contract, the defendants' motion to dismiss be, and the same hereby is, overruled and denied."

"* * *."

Over three years later, on May 27, 1981, upon defendants' pre-trial motion for summary judgment, the court ordered that:

"The defendants' motion for summary judgment is sustained with regard to plaintiff's claim for invasion of privacy and/or interference in or with plaintiff's private activities.

"The motion for summary judgment is sustained with regard to plantiff's claim of malicious interference with or in her contract of employment.

"The motion for summary judgment is denied with regard to plaintiff's claim for wrongful discharge."

"* * *."

We think it clear that the combined effect of these two orders of the court left for trial only plaintiff's claim for wrongful discharge based on breach of contract. That this view was obviously shared by both parties and the court is made evident by statements made by counsel in open court on June 9, 1981:

"* * *.

"MR. POWELL:

"At this time, in view of the Court's ruling that we are down to the one issue, that being the implied

contract, we feel that it is quite clear that punitive damages are not appropriate * * *.

"* * *.

"MR. WOLFE: I think basically, your Honor, in view of the Court's finding on the summary judgment, I would have to agree with counsel for the defendants, that the issue of punitive damages has been removed from the case on a breach of contract case.

"* * *.

"THE COURT: In that case, the defendants' motion to remove the issue of punitive damages is sustained."

"* * *."

For the same reasons, defendants Liipfert and Spitznagel were dismissed, and the case proceeded solely as a breach of implied contract action.

Clearly, the court's order of March 29, 1978, did not dismiss a claim for wrongful discharge based on tort, nor was defendant granted summary judgment on that claim by the May 27, 1981, order of the court. Thus, we can only surmise that if it were in issue at all in the proceedings below, the claim for tortious discharge was inadvertently or otherwise abandoned by plaintiff.

Accordingly, we overrule plaintiff's first assignment of error.

II

As first stated in *Housh v. Peth* (1956), 165 Ohio St. 35, 39:

"* * *.

" 'The invasion of the right of privacy may be defined also as the wrongful intrusion into one's private

activities in such manner as to outrage or to cause mental suffering, shame or humiliation to a person of ordinary sensibilities. * * *.'"

The issue is, therefore, whether the trial court erred in concluding that reasonable minds could not, after construing the evidence, pleadings, affidavits and various depositions most strongly in plaintiff's favor, find an intrusion into plaintiff's private life such as would cause outrage, mental suffering, shame and humiliation to a person of ordinary sensibilities.

Plaintiff claims that it is an actionable invasion of privacy for a male superior to invite his female secretary to come to his apartment after working hours. Although perhaps under some circumstances, such an invitation could be considered offensive, we do not find that the circumstances presented here are sufficient to constitute a cause of action for an invasion of privacy as defined in Housh v. Peth, supra.

Without deciding, a different result might have been reached had the proposition been continually repeated or pursued further. Such constant harassment might well cause mental suffering and humiliation sufficient to give rise to a cause of action for invasion of privacy. But that is simply not the case here. Plaintiff has alleged only a single incident, and there is no claim that it was ever repeated or even mentioned thereafter.

Accordingly, the second assignment of error is overruled.

III

Plaintiff claims that in order to induce her to resign, she was subjected to an unfairly heavy work load, numerous complaints, criticisms and insults, and was shunned

and ostracized, causing her severe emotional and mental distress.

The intentional infliction of emotional and mental distress, sometimes referred to as "the tort of outrage," is not recognized in this state as being the proper subject of a separate cause of action. *Hamilton v. East Ohio Gas* (1973), 47 Ohio App. 2d 55, 58.

We, therefore, reject plaintiff's third assignment of error.

IV

As we have previously stated in our discussion of the Roadway appeal, plaintiff had neither an express nor an implied contract of employment. Thus, plaintiff can have no cause of action for "interference with a contractual relationship." However, a cause of action is cognizable for interference with an employment relationship, even absent a contract.

Plaintiff claims that defendants Liipfert and Spitznagel maliciously interfered with her employment relationship with Roadway and are liable therefor. We disagree. As stated in *Anderson v. Minter* (1972), 32 Ohio St. 2d 207, 213:

"* * *.

"Tuttle is alleged to have maliciously induced Minter to suspend plaintiff, and upon that basis the Court of Appeals concluded that an 'action in tort' is stated against Tuttle 'for interference with [plaintiff's] employment.' We disagree.

"Tuttle is alleged to have been 'in a supervisory position over the plaintiff at the time of the acts complained of.'

> "Causes of action have been recognized against 'outsiders' for malicious interference with employment. Johnson v. Aetna Life Ins. Co. (1914), 158 Wis. 56, 147 N.W. 32. Where, however, the act complained of is within the scope of a defendant's duties, a cause of action in tort for monetary damages does not lie. Nor can liability be predicated simply upon the characterization of such conduct as malicious. * * *." (Citations omitted).

See also, *Fawcett v. G. C. Murphy & Co., supra;* and *Hill v. Gatz* (1979), 63 Ohio App. 2d 170, 175.

Without question, both Liipfert and Spitznagel were plaintiff's superiors. Certainly, the power to terminate plaintiff's employment was inherent in their respective positions. As stated above, even if plaintiff could prove a malicious motive in her termination, a cause of action for interference with her employment is nevertheless precluded.

Accordingly, we reject plaintiff's fourth assignment of error.

V, VI, VII, AND VIII

As we have already discussed in the preceding sections of this opinion, plaintiff's tort claims were properly dismissed by the trial court. Thus, we need not determine the propriety of the trial court's order overruling plaintiff's motion to compel answers from witnesses Rainieri and Wilson, for even if the court committed error in so ruling, such error was not prejudicial to plaintiff, and was, therefore, harmless.

Likewise, since Liipfert and Spitznagel were properly dismissed as parties-defendants, taking with them plaintiff's claim for punitive damages, the question of their

individual respective wealth was no longer an issue in the case. Again, the error in deferring the answers, if any, was harmless.

SUMMARY

Plaintiff's assignments of error are overruled and the judgment and orders of the trial court are affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Summit Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to Helen West.

Exceptions.

/s/ WILLIAM H. VICTOR
Presiding Judge for the Court

VICTOR, *P. J.*
BELL, *J.*
Concurs

QUILLIN, *J.*
Concurs in
Judgment Only.

JOURNAL ENTRY OF THE COURT OF APPEALS

(Filed May 4, 1982)

C.A. NO. 10263

IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

STATE OF OHIO)
) ss:
COUNTY OF SUMMIT)

HELEN WEST,
Plaintiff-Appellee Cross-Appellant,

v.

ROADWAY EXPRESS, INC.,
Defendant-Appellant Cross-Appellee.

JOURNAL ENTRY

Upon appellee's motion for reconsideration, the court finds that the last paragraph on page 11 of the Decision and Journal Entry filed in this cause on April 21, 1982, should read as follows:

"Thus Roadway's motion for directed verdict should have been granted, it being entitled to judgment as a matter of law. Accordingly, the verdict and judgment for plaintiff rendered below is reversed, and final judgment on the issue of implied contract entered in favor of Roadway."

To the extent above indicated, appellee's motion is well taken. The remainder of the motion is overruled.

/s/ WILLIAM H. VICTOR
Presiding Judge

/s/ SAM H. BELL
Judge

/s/ DANIEL B. QUILLIN
Judge

FINDING OF THE COURT OF COMMON PLEAS

(Filed March 17, 1978)

Case No. 78-1-0094

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

vs

ROADWAY EXPRESS, INC., et al.,
Defendants.

FINDING

This cause came on to be heard upon the Defendants' motion to dismiss the complaint.

It is the opinion of the Court that Plaintiff's complaint regarding a violation of her rights under 42 U.S.C. Sections 2000 E-1 et seq. must be dismissed by reasons of

the order of Judge Leroy J. Conti, Jr. in case No. C77-178A in the United States Dstrict Court of the Northern District of Ohio.

Plaintiff's complaint of a violation of her rights under Section 4112.02 et. seq. of the Ohio Revised Code must be dismissed for the failure of the Plaintiff to exhaust her administrative remedies as provided by the Ohio Revised Code, and further because the Revised Code does not provide for private enforcement of Section 4112.02 et. seq. except for violations of subsection H of Section 4112.02 of the Ohio Revised Code.

With regard to Plaintiff's complaints of invasion of privacy, malicious interference with contract and breach of contract, the Defendants' motion to dismiss is not well taken, and the same is herewith denied.

* * * * **

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*The portion omitted here pertains solely to a protective order in discovery and exceptions to the parties.

ORDER AND JUDGMENT OF THE COURT OF COMMON PLEAS

(Filed March 29, 1978)

Case No. 78-1-0094

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

vs.

ROADWAY EXPRESS, INC., *et al.*,
Defendants.

ORDER AND JUDGMENT

This cause came on to be heard on the defendants' motion to dismiss the complaint for failing to state a cause of action and lack of jurisdiction and upon the defendants' motion for a protective order pursuant to Rule 26(C) against the taking of the deposition of Charles Zodrow.

Upon consideration of the briefs of counsel, the court on March 17, 1978, made a written finding of fact; it is therefore ORDERED that the plaintiff's complaint regarding a violation of her rights under 42 U. S. C. Sections 2000 e-1, et seq. and violations of her rights under Section 4112.02 et seq. of the Ohio Revised Code be, and the same hereby are, dismissed. With respect to the plantiff's claim for invasion of privacy, malicious interference with con-

tract and breach of contract, the defendants' motion to dismiss be, and the same hereby is, overruled and denied.

* * * * **

JUDGE PRICE

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*The portion omitted here pertains solely to a protective order in discovery and exceptions to the parties.

FINDING OF THE COURT OF COMMON PLEAS

(Filed May 21, 1981)

Case No. 78-1-0094

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

vs.

ROADWAY EXPRESS, INC., *et al.*,
Defendants.

FINDING

The Defendants motion for summary judgment is sustained with regard to Plaintiff's claim for invasion of privacy and or interference in or with Plaintiff's private activities. The motion for summary judgment is sustained with regard to Plaintiff's claim of malicious interference with or in her contract of employment.

This Court is of the opinion that there is, after an employee has successfully completed a probationary period of employment, an implied promise that the employee will not be discharged except for cause.

The motion for summary judgment is denied with regard to Plaintiff's claim for wrongful discharge.

JUDGE PRICE

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS

(Filed May 29, 1981)

Case No. 78 1 0094

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

VS.

ROADWAY EXPRESS, INC., *et al.*,
Defendants.

JUDGMENT ENTRY

The defendants' motion for summary judgment is sustained with regard to plaintiff's claim for invasion of privacy and/or interference in or with plaintiff's private activities.

The motion for summary judgment is sustained with regard to plaintiff's claim of malicious interference with or in her contract of employment.

The motion for summary judgment is denied with regard to plaintiff's claim for wrongful discharge.

It is so ORDERED, ADJUDGED and DECREED.

Exceptions to all parties.

JUDGE PRICE

JOURNAL ENTRY NUNC PRO TUNC, JUNE 9, 1981, OF THE COURT OF COMMON PLEAS

(Filed August 14, 1981)

Case No. CV 78 1 0094

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

vs.

ROADWAY EXPRESS, INC., *et al.*,
Defendants.

JOURNAL ENTRY NUNC PRO TUNC

Counsel for defendants, having moved in limine in open court on June 9, 1981, that the court exclude all evidence of the wealth of the defendants giving rise to a claim for punitive damages against any of the defendants, and the court having sustained said motion for the reasons assigned and agreed to in the record;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that all evidence of the wealth of the parties defendant to this case be, and the same hereby is, excluded from consideration by the jury and the court, and that no claim for punitive damages be allowed.

Counsel for defendants, Otto E. Liipfert and W. F. Spitznagel, having also on June 9, 1981, moved in open court for a judgment of dismissal against said defendants

and the court having sustained the same, as will appear in the record;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said Otto E. Liipfert and W. F. Spitznagel be, and they hereby are, dismissed as parties defendant in this case.

This judgment shall relate back and take effect as of June 9, 1981, nunc pro tunc.

JUDGE PRICE

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS

(Filed June 16, 1981)

Case No. CV 78 1 0094

COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

HELEN WEST,
Plaintiff,

vs.

ROADWAY EXPRESS, INC., *et al.*,
Defendants.

JUDGMENT

The jury in this case having on June 12, 1981, rendered a verdict for the plaintiff and assessed her damages in the amount of Two Hundred Eighty-seven Thousand Dollars ($287,000.00);

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff Helen West recover from the defendant Roadway Express, Inc., the sum of Two Hundred Eighty-seven Thousand Dollars ($287,000.00), together with her costs herein expended.

Exceptions to the defendant Roadway Express, Inc.

JUDGE PRICE

PETITIONER'S PROPOSITIONS OF LAW ASSIGNED IN THE SUPREME COURT OF OHIO

Proposition of Law No. 1

The relationship of employer and employee arises out of contract, express or implied. As in the case of contracts generally, the duration of the contract, the time and method of termination, the compensation, and other provisions depend primarily upon the intention of the parties, interpreted in the light of all the surrounding facts and circumstances. (*Bascom v. Shillito* (1882), 37 Ohio St. 431 and *Kelly v. Carthage Wheel Co.* (1900), 62 Ohio St. 598 approved and followed.)

Proposition of Law No. 2

If an employer restricts its employees' freedom to terminate their employment so that their employment is not terminable at will, then the employer may not terminate its employees at will but only for just cause.

A. Because Roadway's employees were not free to terminate their employment at will, "mutuality of obligation" requires that Roadway should not be free to terminate its employees at will.

B. By structuring its employees' compensation to create a burden of diminished employee mobility, Roadway required its employees to furnish a consideration and Roadway received a benefit in addition to its employees' services.

Proposition of Law No. 3

An employment contract provision that an employee shall not be discharged except for cause may become part of the contract either by express agreement, oral or written, or as a result of the employee's reasonable expectations grounded in the employer's employment practices and personnel policies.

Proposition of Law No. 4

An employee has a cause of action in tort when the employee is discharged for refusing to commit an illegal act, an act which violates a fundamental principle of public policy, or the employee's civil or federal constitutional rights. When the employee's loss of employment is on the basis of sex and violates the employee's civil rights, the employee has a private cause of action for rights established by R.C. 4112.02 and 42 U.S.C. §§ 2000 *et seq.*

Proposition of Law No. 5

When a court holds that an employer's promise of permanent employment until retirement age is for an indefinite duration and, hence, terminable at will as a matter of law, even though a jury has found that the parties intended the employment to be terminable only for cause, the state has thereby impaired the obligation of contract, deprived the employee of her liberty and property and denied her trial by jury, contrary to Article I, §§1 and 5 of the Constitution of Ohio and Article I, §10 and the Fourteenth Amendment of the Constitution of the United States.